



PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF ALTEVA OF WARWICK LLC TO ARCHTOP FIBER LLC

WC Docket No. 23-178

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by MBS Intermediate Holdings, LLC (MBS) and Archtop Fiber L.L.C. (Archtop) (together, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of MBS' indirect subsidiary, Alteva of Warwick LLC (f/k/a Warwick Valley Telephone Company) (Warwick), from MBS to Archtop.²

On July 14, 2023, the Bureau released a public notice seeking comment on the Application.³ The Bureau did not receive any comments or petitions in opposition to the Application.

Warwick is a wholly-owned subsidiary of Alteva, Inc. (Alteva), both New York cooperations.⁴ Alteva, in turn, is directly owned and controlled by MBS, a Delaware limited liability company.⁵ Warwick provides service as an incumbent local exchange carrier (LEC) in the Townships of Warwick, Goshen, and Wallkill in Orange County, New York, and in West Milford, Vernon, and Franklin Borough,

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

² Application of Warwick LLC, MBS Intermediate Holdings, LLC, and Archtop Fiber LLC for Consent to Transfer Control of Alteva of Warwick LLC Pursuant to Section 214 of the Communications Act of 1934, as amended, WC Docket No. 23-178 (filed May 26, 2023) (Application). Applicants also filed an application for the transfer of authorizations associated with international services. See IB File No. ITC-T/C-20230526-00068. Archtop recently acquired incumbent local exchange carriers (LECs) and long distance service providers that provide service in various towns of New York and Pennsylvania. *Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC and Hancock Telephone, Inc. and Hancock Long Distance, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421 and 23-29, Public Notice, DA 23-657 (WCB 2023) (*GTel and Hancock Grant Public Notice*); see also *Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC and Hancock Telephone, Inc. and Hancock Long Distance, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421 and 23-29, Order on Reconsideration, DA 23-800 (WCB 2023) (*Archtop Reconsideration Order*) (the Bureau, on its own motion, modified a portion of the *GTel and Hancock Grant Public Notice*). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Application Filed for the Transfer of Control of Alteva of Warwick LLC to Archtop Fiber LLC*, WC Docket Nos. 23-178, Public Notice, DA 23-603 (WCB 2023) (*Alteva Public Notice*).

⁴ Application at 2; Exh. B (Pre-Close Ownership Structure) at 1.

⁵ *Id.* at 3; Exh. B at 1.

New Jersey.⁶ Warwick also provides competitive LEC services in Middleton and Scotchtown, New York and areas in New Jersey that are outside its incumbent LEC service territory.⁷

Archtop, a Delaware limited liability company, provides, through its subsidiaries, incumbent local exchange carrier (LEC) and long distance services in various towns of New York and Pennsylvania.⁸ Archtop is indirectly owned (98.7% voting and equity) by Post Road Digital Infrastructure Fund I LLC, which, in turn, is wholly-owned by Post Road Digital Infrastructure Fund I, LP (Post Road), both Delaware entities.⁹ The voting interest in Post Road is held by Post Road DIF I GP LLC (Post Road DIF GP) (50.5%), a Delaware entity, and OPTrust Infrastructure Direct N.A. VII Inc. (OP Trust Infrastructure) (49.5%), a Canadian entity.¹⁰ Post Road DIF GP is indirectly owned (100% voting and 80% equity) by Post Road Group Holdings LP (PRG Holdings), a Delaware entity that is ultimately owned and controlled by Michael Bogdan and Kevin Davis, both U.S. citizens.¹¹

Pursuant to the terms of the proposed transaction, Archtop will acquire all of the equity and voting interest in Alteva and, therefore, indirectly acquire all of the equity and voting rights in Warwick.¹²

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 11. Archtop recently acquired two incumbent LECs and their long distance affiliates. *See GTel and Hancock Grant Public Notice* at 1-3. Specifically, Archtop acquired Germantown Telephone Company, Inc. (GTel), a New York corporation, providing service as an incumbent LEC in the towns of Germantown, Livingston, Clermont, Taghkanic, and Gallatin, New York, and Valstar, Inc. a New York corporation, providing long distance services in GTel's service area. *Id.* Archtop also recently acquired Hancock Telephone Company, Inc. (Hancock), a New York corporation, providing service as an incumbent LEC in the towns of Hancock, Fish's Eddy, East Branch, Kelsey, and French Woods, New York, and Starlight, Lake Como, Preston Park, Lakewood, and Shehawken, Pennsylvania, and Hancock LD, also a New York corporation, providing long distance service in Hancock's service area. *Id.* Applicants in the instant application state that "[t]o the best of Applicants' knowledge, none of the entities [covered in the *GTel and Hancock Grant Public Notice*] provide local exchange or interexchange services in the same geographic market as Warwick." Application at 21.

⁹ *Id.* at 12: Exh. C (Post-Closing Ownership Chart) at 2.

¹⁰ *Id.* at 12-13 and Exh. C at 2. The OPSEU Pension Plan Trust Fund (OPSEU Pension Plan), a Canadian entity, wholly owns OP Trust Infrastructure. Application at 13 and Exh. C at 2. The OPSEU Pension Plan holds an approximately 10.5% indirect interest in Dobson Technologies, Inc. d/b/a Dobson Fiber (Dobson Fiber), an interstate telecommunications carrier offering services in Arkansas, Oklahoma, and Texas. Application at 20. Dobson Fiber wholly owns the following subsidiaries: Dobson Telephone Company, Inc., (DTC), Dobson Technologies – Transport and Telecom Solutions, LLC, Lavaca Telephone Company, Inc. (Lavaca), Pinnacle Telecom L.L.C., and Vantage Telecom, LLC. *Id.* DTC provides service as an incumbent LEC and eligible telecommunications carrier (ETC) to approximately 5,200 access lines in western and eastern Oklahoma. *Id.* at n.21. Lavaca provides service as an incumbent LEC and ETC to about 1,800 access lines in rural western Arkansas and rural eastern Oklahoma. *Id.*

¹¹ Application at 14-15 and Exh. C at 1. The general partner for PRG Holdings is Post Road Group GP LLC (Post Road GP), a Delaware entity. Application at 14 and Exh. C at 1. Post Road GP holds all the voting general partner interest in PRG Holdings. *Id.* Michael Bogdan holds all the voting and equity interest in Birch Hill Capital LLC, a Delaware entity, which, in turn, holds 50% voting and equity in Post Road GP and 45% of the equity of PRG Holdings. Application at 14-15. Kevin Davis holds all the interest in Seventh Avenue Capital Group LLC (Seventh Avenue) and Seventh Avenue Capital Group II LLC (Seventh Avenue II), both Delaware entities. *Id.* at 14. Seventh Avenue holds 50% of the voting and equity interest in Post Road GP, while Seventh Avenue II holds 45% of the equity in PRG Holdings. *Id.*

¹² Application at 4-5.

Discussion

The Applicants request approval to consummate a transaction involving companies that receive high-cost universal service support under the different support mechanisms of fixed model-based support and cost-based support (a mixed support transaction).¹³ In the *Hargray/ComSouth Order*, the Commission found that these types of transactions could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively by allowing for cost shifting among the cost-based and fixed model-based support recipients that are party to the transaction.¹⁴ Accordingly, it imposed a condition on these transactions, i.e., a cap on the combined operating expenses of all cost-based affiliates of the post-transaction transferee¹⁵ and any future cost-based affiliates (with limited exception) for the duration of the condition (mixed support condition).¹⁶

The proposed transaction presents several layers of mixed support, for each of which the Commission in previous transactions has already applied the mixed support condition, consistent with the *Hargray/ComSouth Order*.¹⁷ Accordingly, and to mitigate the potential for cost shifting, we grant the Application subject to the continued application of the mixed support conditions previously applied to each party through and until December 31, 2023.

The mixed support conditions will only apply through and until December 31, 2023, because all the cost-based affiliates to this transaction have elected Enhanced Alternative Connect America Model

¹³ Applicants have identified the fixed and model-based support entities in the record and acknowledge that “this application presents certain common questions [of mixed support] for the Commission arising from pending applications filed by Archtop in separate dockets.” Application at 21.

¹⁴ *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780 (2018) (*Hargray/ComSouth Order*). The Commission also directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support. *Id.* at 4789, para. 27 n.72.

¹⁵ See *Hargray/ComSouth Order*, 33 FCC Rcd at 4790, para. 27 (stating that the combined operating expenses shall be capped at the averaged combined operating expenses of the three calendar years preceding the transaction closing date for which the operating expense data are available).

¹⁶ *Id.* at 4788-90, paras. 26-31. The Commission directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support. *Id.* at 4789, para. 27 n.72.

¹⁷ See *Domestic Section 214 Application Granted Subject to Condition*, WC Docket No. 18-268, Public Notice, 33 FCC Rcd 11211 (WCB 2018) (capping the operating expense of the post-transaction transferee’s cost-based affiliate, Alteva of Warwick (Alteva NJ)); *GTel and Hancock Grant Public Notice* at 5 (capping the combined operating expenses of the post-transaction transferee’s cost-based affiliates, GTel, Lavaca Telephone Company of Arkansas, and Lavaca Telephone Company of Oklahoma (Lavaca carriers)), reconsidered and partially modified, *Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC and Hancock Telephone, Inc. and Hancock Long Distance, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421 and 23-29, Order on Reconsideration, DA 23-800 (WCB 2023) (excluding the Lavaca carriers from the cap because these carriers were not within the ownership and control of the post-transaction transferee (see *infra* Dobson exception) and therefore, presented limited risk of cost-shifting; reverting the Lavaca carriers to the mixed support condition imposed in a 2021 transaction); see also *Domestic Section 214 Applications Granted Subject to Condition*, WC Docket Nos. 20-388 and 20-389, Public Notice, 36 FCC Rcd 320, 323-24 (WCB 2021) (capping the combined operating expense of the post-transaction transferee’s affiliates, including the Lavaca carriers), reconsidered and partially modified, *Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc.*, WC Docket No. 20-389, Order on Reconsideration, 36 FCC Rcd 8859 (2021) (excluding a cost-based affiliate, Fort Mojave Telecommunications, Inc., from the mixed-support condition where the 1) transferee only held a minority, non-controlling interest in the affiliate, 2) the affiliate engaged in no cost sharing with any transferee affiliates; and 3) the affiliate maintained separate financial accounting from all other transferee affiliates (Dobson exception)).

(A-CAM), a form of fixed support, effective January 1, 2024.¹⁸ As announced in the Bureau's public notice released on December 4, 2023,¹⁹ the existing mixed support conditions imposed on each layer of this transaction will sunset on January 1, 2024, with the conversion of all the post-transaction, cost-based affiliates at each layer to fixed Enhanced A-CAM.²⁰ As stated in the *Hargray Sunset Public Notice*, the mixed support condition and related obligations we imposed under the *Hargray/ComSouth Order* will continue to apply to all cost and revenue data that is applicable to the 2023 calendar year, and these companies must file their compliance certification for 2023 by January 2, 2024,²¹ and financial reports as required by the *Hargray/ComSouth Order*.²²

National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.²³ As part of the public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.²⁴ The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.²⁵ The Commission, however, ultimately makes an independent decision on such applications based on the record in the proceedings.²⁶

¹⁸ See *Wireline Competition Bureau Authorizes 368 Companies in 44 States to Receive Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-1025 (WCB Oct. 30, 2023).

¹⁹ *Wireline Competition Bureau Provides Additional Guidance on Performance Measures Requirements for Carriers Transitioning to Enhanced A-CAM and those Remaining on CAF BLS Support*, WC Docket 10-90, Public Notice, DA 23-1131 (WCB Dec. 4, 2023) (*Hargray Sunset Public Notice*).

²⁰ See *id.* at 4, Appx. (for each transaction identified, all cost-based affiliates have elected Enhanced A-CAM, thus warranting the sunset of the condition as applied to the transaction).

²¹ 47 CFR § 1.4(j) (providing that unless otherwise provided, if the filing date falls on a holiday, the filing will be due the next business day).

²² *Hargray/ComSouth Order*, 33 FCC Rcd at 4790, para. 31 & n.82.

²³ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 & 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of application for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act); see also *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

²⁴ See *Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

²⁵ *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179,

(continued....)

Pursuant to Commission practice, the Application and its corresponding international transfer of control application, IB File No. ITC-T/C-20230526-00068, were referred to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.²⁷ On July 20, 2023, the U.S. Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a notification with the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application.²⁸ We deferred action in response to these requests from the Committee. On August 31, 2023, DOJ notified the Commission that the Committee was “conducting [a 120-day] initial review to assess whether granting the Application will pose a risk to national security or law enforcement interests of the United States.”²⁹

On December 4, 2023, the National Telecommunications and Information Administration (NTIA) informed the Commission that “the Committee has reviewed the [Application] and has no recommendation at this time to the Commission approving the [Application] and no objection to the Commission granting it” and that the Committee “reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests.”³⁰

Grant of Application

We find, upon consideration of the record, that grant of the Application, listed above will serve the public interest, convenience, and necessity.³¹ Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice.³²

Pursuant to section 1.103 of the Commission’s rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or application for review under section 1.115 of the Commission’s rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Gregory Kwan, Wireline Competition Bureau,

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182 (1997)); *see also T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

²⁶ 47 CFR § 1.40001(b) (“The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) . . . that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.”).

²⁷ *See Alteva Public Notice* at 3.

²⁸ Letter from Christopher R. Clements, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-178; ITC-T/C-20230526-00068, and Attach. (filed July 20, 2023).

²⁹ Letter from Christopher R. Clements, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-178; ITC-T/C-20230526-00068, and Attach. (filed Aug. 31, 2023).

³⁰ Letter from Stephanie Weiner, National Telecommunications and Information Administration, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, WC Docket No 23-178; ITC-T/C-20230526-00068 (filed Dec. 4, 2023).

³¹ *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

³² We further direct Applicants to submit in the domestic section 214 docket a notice that the proposed transaction has closed with the consummation date and also provide a courtesy copy of the notice to hcinfo@usac.org.

Competition Policy Division, (202) 418-1191.

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